

REMARKS/DISCUSSION OF ISSUES

By this Amendment, Applicants cancel claims 1-3 and 12-13 without disclaimer of the underlying subject matter, or prejudice against subsequent presentation, and amend claims 9-11 to change their dependencies.

Accordingly, claims 4 and 9-11 are pending in the application.

Reexamination and reconsideration are respectfully requested in view of the following Remarks.

RESTRICTION REQUIREMENT

The Office Action includes a restriction between claims 1-4 and 9 ("Group I"), and claims 10-13 ("Group II"). The Office Action also insists upon Applicants making an election (even though the Office Action also states that Applicants have already "constructively elected" claims 1-4 and 9).

To the extent that the restriction requirement is not mooted by this Amendment, and to the extent that Applicants actually have an option to elect a group, Applicants elect Group I, **with traverse**.

Upon entry of this Amendment, claims 1-3 and 12-13 will be canceled, and claims 10-11 will depend from claim 4, in Group I. Since all of the claims would then depend from claim 4, it is respectfully submitted that the amended claims would all include the same inventive concept and belong in one patent application.

If, for some reason, the Examiner declines to enter this Amendment, then Applicants still traverse the requirement. The Office Action attempts to distinguish the two "groups" by stating that Group I includes *"circuitry related to detecting the state of the cell,"* and Group II includes *"circuitry related to programming and reading the cell using respective programming and read voltages."* To this, Applicants respond: (1) anyone of skill in the art would easily understand that reading the cell includes "detecting the state of the cell;" (2) anyone of skill in the art would understand that the first transistor of claim 1, and the n-channel transistor of claim 4, necessarily program the cell; and (3) therefore under PCT Rule 13.2, the claims all

include the same or corresponding technical features. This means that the claims are all properly examined in a single patent application under PCT Rules. It does NOT mean that any of the claims is an obvious variant of another, and Applicants specifically traverse any suggestion in the Office Action that they are obliged to make such an "admission," and they respectfully decline to make any such admission here.

Accordingly, for at least these reasons, Applicants respectfully request that the restriction requirement be withdrawn.

35 U.S.C. § 103

The Office Action rejects: claim 4 under 35 U.S.C. § 103 over Killat U.S. Patent 6,704,221 ("Killat") in view of Applicant's Admitted Prior Art ("AAPA"); and claim 9 under 35 U.S.C. § 103 over Killat in view of AAPA and further in view of Lin et al. U.S. Patent 5,615,150 ("Lin").

Applicants respectfully traverses these rejections for at least the following reasons.

Claim 4

Among other things, in the cell of claim 4, an n-well diffusion region of the p-channel transistor is the control gate of said floating capacitor.

The Office Action fairly concedes that such a feature is not disclosed by Killat.

However, the Office Action claims that such a feature is disclosed by Applicants as "admitted prior art," citing page 3, lines 13-15 of the specification.

Applicants respectfully disagree.

The text at page 3, lines 13-15 is not "admitted prior art."

Nowhere is the text at page 3, lines 13-15 described or identified as being "prior art." Indeed, to the contrary, the text beginning at page 2, line 16 and continuing through page 3, lines 13-15 and beyond is clearly identified as pertaining to "the invention" and embodiments thereof (see, e.g., page 2, lines 16, 22, and 28; page 3, lines 5, 7, 12, etc.).

So Applicants specifically traverse the statement in the Office Action that

"Applicant's admitted prior art teaches the control gate of the cell being a n-well diffusion region."

Meanwhile, the specification merely discloses that any CMOS process is inherently suitable for supporting the production of the cell of claim 4. The fact that the specification teaches that the feature inherently could be achieved using any CMOS process does not mean that the feature is inherently present in every CMOS cell . . . or, more importantly, that it would have been obvious to one of ordinary skill in the art at the time the invention was made) to have included such a feature when making such a cell. This is clearly evidenced by the fact that the feature is not present in the first embodiment of the invention, shown in FIGs. 3-5 (but is present in the second embodiment shown in FIGs. 6-8).

Indeed, the language at question in the specification does not even suggest that it even would have been known by one of ordinary skill in the art at the time the invention was made that any CMOS process could be adapted to support such a feature.

Therefore, Applicants respectfully submit that no combination of the "true" AAPA with Killat would produce the cell of claim 4.

Furthermore, even if such a feature was disclosed by the AAPA, Applicants would traverse the proposed combination, as the Office Action fails to provide any rationale or reason whatsoever for the proposed combination that would have been known to one of ordinary skill in the art at the time the invention was made.

Accordingly, for at least these reasons, Applicants respectfully submit that claim 4 is patentable over the cited prior art.

Claims 9-11

Claims 9-11 depend from claim 4 and are deemed patentable for at least the reasons set forth above with respect to claim 4, and for the following additional reasons.

Claim 11

In the cell of claim 11, the drain of the p-channel transistor is adapted to

float when the data value is programmed into the cell, and the drain of the n-channel transistor is adapted to float when the data value is read from the cell.

Applicants respectfully submits that such a combination of features is not disclosed by the cited prior art.

Accordingly, for at least these additional reasons, Applicants respectfully submit that claim 11 is patentable over the cited prior art.

CONCLUSION

In view of the foregoing explanations, Applicants respectfully request that the Examiner reconsider and reexamine the present application, allow claims 4 and 9-11 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

If necessary, the Commissioner is hereby authorized in this reply to charge payment or credit any overpayment (except for the issue fee) to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17, particularly extension of time fees.

Respectfully submitted,

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